



CITY OF SANTA BARBARA

COUNCIL AGENDA REPORT

AGENDA DATE: November 20, 2012

TO: Mayor and Councilmembers

FROM: Engineering Division, Public Works Department

SUBJECT: Contract For Construction For Taxiways H, J And C Pavement Rehabilitation Project

RECOMMENDATION: That Council:

- A. Reject the bid protest submitted by Granite Construction Company;
- B. Award a contract with John Madonna Construction, in their low bid amount of \$2,738,767.80, for construction of the Taxiways H, J and C Pavement Rehabilitation Project, Bid No. 3675, and authorize the Public Works Director to execute the contract, subject to approval as to form by the City Attorney, and approve expenditures up to \$273,000 to cover any cost increases that may result from contract change orders for extra work and differences between estimated bid quantities and actual quantities measured for payment;
- C. Authorize the Public Works Director to execute a contract with Tartaglia Engineering, subject to approval as to form by the City Attorney, in the amount of \$449,108 for construction support services, and approve expenditures of up to \$50,000 for extra services of Tartaglia Engineering that may result from necessary changes in the scope of work; and
- D. Increase appropriations and estimated revenue by \$1,040,508 in the Airport's Grants Fund to be funded from a transfer of reserves in the Airport Operating Fund, pending receipt of the Federal Fiscal Year 2013 Federal Aviation Authority, Airport Improvement Program grant for Phase II of Taxiways H, J and C Rehabilitation Project.

DISCUSSION:

Executive Summary

The work consists of rehabilitating the pavement on Taxiways H, J and C at the Santa Barbara Airport. The pavement surface of Taxiways H and J will be ground down by 2-6 inches and a new course of asphalt concrete will be applied. Taxiway C will be completely reconstructed by removing all existing pavement, and a new pavement section with gravel base and asphalt concrete will be constructed.

Five bids were received. The two lowest bids were received from John Madonna Construction (Madonna), the apparent low bidder, and Granite Construction (Granite).

CONTRACT BIDS

A total of five bids were received for the subject work, ranging as follows:

BIDDER	BID AMOUNT
1. John Madonna Construction San Luis Obispo, CA	\$2,738,767.80
2. Granite Construction Santa Barbara, CA	\$2,814,151.00
3. CalPortland Construction Santa Maria, CA	\$2,852,415.66
4. Nye & Nelson Ventura, CA	\$2,945,799.85
5. R. Burke Corporation San Luis Obispo, CA	\$3,093,973.00

BID PROTEST

On August 21, 2012, bids were received by the City of Santa Barbara for the Taxiway H, J and C Pavement Rehabilitation Project (Project), Bid No. 3675. Madonna submitted the apparent lowest bid on the Project in the amount of \$2,738,767.80. Granite submitted the second apparent lowest bid in the amount of \$2,814,151. Madonna's bid contained the required subcontractor listing sheet and, in response to an inquiry by the City Engineer, Madonna provided the subcontractor bids along with the percentage of the total work to be performed by each subcontractor. (See Madonna letter dated August 23, 2012.)

On September 5, 2012, Granite asked the City to confirm whether the Madonna bid complied with the bid specifications and, if not, Granite stated its intent to protest the award of the contract to Madonna. The Bid Specifications, Madonna's Bid and all related correspondence are available for City Council review in the binder located in the City Council reading file. A copy of the binder has been provided to Madonna and to Granite. Both Madonna and Granite have indicated that they will be present at the City Council meeting.

As an initial matter, Madonna argues that "Granite has not complied with the bid protest procedures set forth in Section A2.22 of the City's Bid Requirements for the project." Specifically, Madonna claims that Granite was required under Section A2.22 to transmit a copy of the protest to Madonna's subcontractors as "parties with a direct financial

interest which may be adversely affected by the outcome of the protest.” As provided in A2.22, such parties include “all other bidders or proposers who appear to have a reasonable prospect of receiving an award depending upon the outcome of the protest” which, according to Madonna, includes Madonna’s subcontractors. If true, this error is “fatal” to the protest and results in a waiver of Granite’s right to pursue the bid protest. (See, Madonna legal counsel letter dated September 10, 2012.)

Granite, in response, asserts that it complied with Section A2.22 because Madonna is the only party with a “direct financial interest” in the outcome of the bid dispute and it was provided with a copy of the letter. Second-tiered subcontractors, Granite argues, have an “indirect” financial interest in the outcome of the dispute because they do not contract with the awarding agency and, as such, have no prospect of receiving a contract depending on the outcome of the protest. Granite supports this position with a 1993 Decision of the Comptroller General of the United States. In that determination, a finding was made that a bidder, unable to perform the contract at the bid price, and therefore not eligible for the contract, is not an “interested party” to the protest. (See, Granite letter dated September 20, 2012.)

City staff concurs with Granite’s analysis and recommends that the City Council reject Madonna’s position and find that Granite complied with Section A.2.22 of the Bid Specifications and properly submitted the bid protest. Madonna’s subcontractors have no direct financial interest in the outcome of the dispute and no prospect of receiving a contract award from the City. The subcontractors subsequent contractual relationship, if any, is with the prime contractor and not with the City.

BASIS OF GRANITE BID PROTEST

Granite asserts that the Madonna Bid does not meet the bid specification requirement that the prime contractor perform, with its own organization, contract work amounting to at least 50 percent of the contract price. Section 2-3.2 of the Standard Specifications for Public Works Construction (2006) of the Southern California Chapter of the American Public Works Association (“Greenbook 2006”), which is a requirement of Section B1.01 of the General Provisions of the Bid Specifications, provides:

“The Contractor shall give personal attention to the fulfillment of the Contract and shall keep the Work under its control. The Contractor shall perform, with its own organization, Contract work amounting to at least 50 percent of the Contract Price... Where an entire item is subcontracted, the value of work subcontracted will be based on the Contract Unit Price. When a portion of an item is subcontracted, the value of the work subcontracted will be based on the estimated percentage of the Contract Unit Price. This will be determined from information submitted by the Contractor, and subject to approval by the Engineer.”

Granite asserts that Madonna’s three subcontractors combined will perform 57.2 percent of the Madonna contract price, leaving Madonna with only 42.8 percent of the contract, which is in violation of the Greenbook Section 2-3.2. According to Granite, if a

subcontractor is listed in the bid to perform a certain bid item, 100 percent of the cost of that item must be calculated as work to be performed by the subcontractor. Whether the prime contractor is to undertake any part of that bid item or not, no part of that bid item can be credited as work to be performed by the prime contractor.

To make this calculation, Granite urges the City Engineer to adopt the method used by the California Department of Transportation (Caltrans). Caltrans' bid specifications require that a prime contractor perform at least 30 percent of the work with its own forces. Two examples are provided by Granite where the apparent low bidder is rejected as non-responsive for failing to comply with the Caltrans requirement. In the first example, the prime contractor's total bid is \$1,549,451, of which \$1,119,912 will be subcontracted work. The remaining \$429,538 to be performed by the prime contractor amounts to only 28 percent of the bid, in violation of the 30 percent mandate. In the second example, the contractor's prime bid is \$321,240. According to the subcontractor list, two subcontractors would each perform 100 percent of their bid items, for a total subcontractor value of \$231,140. Based on these figures, the prime contractor was performing work valued at \$90,100 or 28 percent of the total bid. (See, Granite letter dated September 20, 2012 and attachments thereto.)

Applying the Caltrans method of calculation to Madonna's bid, Granite asserts that the total Madonna Contract price is \$2,738,768, less the total value of subcontracted items in the amount of \$1,567,340 (assigning 100 percent of the value of each subcontracted bid item to subcontractor work), leaving \$1,171,429, or 42.7 percent of the total contract, to be performed by Madonna and, thus, failing to meet the Bid Specifications. (See, Granite letter dated November 2, 2012, Exhibit B.) The value of the subcontracted work, according to Granite, must be broken down as follows:

Bid Item No. 1 (Mobilization):

CalPortland and Super Seal, two of Madonna's subcontractors, are performing \$118,524 or 54.12 percent of the mobilization work.

Bid Item No. 9 (Asphalt Pavement):

CalPortland is performing \$1,263,600 of Bid Item No. 9, or 100 percent of the work. Granite urges the City to disregard the fact that Calportland's bid to Madonna provides that if Madonna undertakes delivery of the asphalt to the job site, the Calportland bid will be reduced by \$157,482 or from \$1,303,900 to \$1,146,418. Granite takes the position that Item No. 9 must be assigned entirely to the subcontractor because it is not likely that Madonna will actually undertake responsibility for the delivery of the asphalt to the job.

Bid Items Nos. 15, 16 17 and 18:

Similarly, according to Granite's analysis, subcontractors will be performing \$185,216 or 100% of the contract price for these bid items.

MADONNA RESPONSE

Madonna asserts that its bid fully complies with section 2-3.2 of the Greenbook which expressly recognizes that subcontracted bid items may be comprised of work to be undertaken by a subcontractor and by a prime contractor and that, in such a case, the subcontracted value is a percentage of the bid unit price and not the entire value of the bid item. (See, Madonna letter dated September 10, 2012.)

Using the actual subcontractor bids provided by Madonna, Madonna's total bid is \$2,738,767 which, less the subcontracted amount of \$1,320,289, results in \$1,418,478 or 51.8 percent of the total contract being performed by Madonna and, therefore, meets the requirement of the Bid Specifications. (See, JMC letter dated August 23, 2012, Exhibit A to Granite Letter November 2, 2012.) The value of the subcontracted work, according to Madonna, must be broken down as follows:

Bid Item No. 1.

Granite's cost is inconsistent with Madonna's bid. Madonna's total bid for Item No. 1 is \$219,000, of which CalPortland's bid is \$39,000 and Super Seal's bid is \$19,260. The total subcontractor Bid Item No. 1 is \$58,260. Madonna is performing \$160,740 of the mobilization, or 73 percent of the work.

Bid Item No. 9.

Granite's calculation does not account for an express reduction in the CalPortland bid to delete the delivery component. Madonna's bid for Item No. 9 is \$1,263,600. CalPortland's bid for Item No. 9 is \$1,094,418. CalPortland's bid is 86.6 percent of the work. Madonna's bid for Item No. 9 reflects its determination to deliver the asphalt to the job site. Granite's assertion that it is not reasonable for Madonna to bid the job in this manner is unfounded.

Bid Items Nos. 15, 16 and 17.

Madonna's bid for Item No. 15 is \$85,100 and All American Asphalt's subcontractor bid is \$74,888, or 88 percent of the bid. Madonna's bid for Item No. 16 is \$32,490 and for Item No. 17 it's \$54,625. Super Seal is performing 90.7 percent of Bid Item No. 16 and 92 percent of Bid Item No. 17.

According to Madonna, the determination by a prime contractor when submitting a bid of whether to incorporate the cost to supervise subcontractors as an item allocated to each subcontracted bid item, or as a lump sum added to the total contract price, is a determination to be made by the prime contractor.

CONCLUSION

Initially, Staff concurs with Granite that its bid protest complies with the procedural requirements set forth in the Bid Specifications and was properly submitted.

With regard to the substance of Granite's bid protest, contrary to Granite's suggestion, the City does not utilize the Caltrans bidding practices. Unlike Caltrans, the City's subcontractor list requires only the name, address, license, and bid item to be performed by a subcontractor. It does not require that the contractor detail the percentage of each bid item to be performed by the subcontractor. In the Caltrans examples provided, it is clear that the contractor's bid was based upon the subcontractors' performance of 100 percent of the item.

Based upon the analysis and correspondence submitted by both Granite and Madonna to the City Engineer, the City Engineer determines that Madonna will perform some work on Bid Item Nos. 1, 9, 15, 16, and 17. Because Madonna will handle delivery of the asphalt to the job site, the subcontractor bid is appropriately reduced and the delivery portion of the unit price is properly allocated to Madonna. For each of the bid items, the difference in the subcontractor's bid price and Madonna's bid price reflects the supervision and coordination to be provided by Madonna. Because only a portion of the bid item is subcontracted, the value of the work subcontracted is based on a percentage of the bid item price. The City Engineer concludes that Madonna is performing more than 50 percent of the contract work and has complied with the Bid Specifications. (See, City Engineer letter dated October 24, 2012.)

Staff recommends that the City Council reject Granite's bid protest and award the contract to Madonna.

CONSTRUCTION PHASE CONTRACT SERVICES

Staff recommends that Council authorize the Public Works Director to execute a contract with Tartaglia Engineering (Tartaglia) in the amount of \$449,108 for construction management and materials testing services, and approve expenditures of up to \$50,000 for extra services that may result from necessary changes in the scope of work. Tartaglia was selected to perform this work in a competitive Request for Proposals process.

FUNDING

On September 25, 2012, Council appropriated the Federal Aviation Administration Airport Improvement Program Grant No. 03-06-0235-045-2012 for Taxiways H, J and C Rehabilitation, in an amount of \$2,610,273, to the Airport's Grant Fund. Funding for Phase II of this project will be awarded during the Fiscal Year 2013. In order to commence the project, the Airport is recommending that the balance of funds needed for the contracts, \$1,040,508, be funded from the Airport's Policy Reserves until receipt of the Phase II grant. Receipt of the Phase II grant is expected by September 30, 2013.

The following summarizes the expenditures recommended in this report:

CONSTRUCTION CONTRACT FUNDING SUMMARY

	Basic Contract	Change Funds	Total
John Madonna Construction	\$2,738,767.80	\$273,000.00	\$3,011,767.80
TOTAL RECOMMENDED AUTHORIZATION			\$3,011,767.80

The following summarizes all Project design costs, construction contract funding, and other Project costs:

ESTIMATED TOTAL PROJECT COST

**Cents have been rounded to the nearest dollar in this table.*

Design (by Contract)	\$139,905
City Staff Costs	\$20,000
Subtotal	\$159,905
Construction Contract	\$2,738,768
Construction Change Order Allowance	\$273,000
Construction Management/Inspection (by Contract)	\$499,108
Subtotal	\$3,510,876
TOTAL PROJECT COST	\$3,670,781

The change order funding recommendation of \$273,000, or 10 percent, is typical for this type of work and size of project.

The low bid of \$2,738,767.60, submitted by Madonna, is an acceptable bid that is responsive to and meets the requirements of the bid specifications.

PREPARED BY: Pat Kelly, Assistant Public Works Director/City Engineer/OT/sk

SUBMITTED BY: Christine F. Andersen, Public Works Director

APPROVED BY: City Administrator's Office